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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re C.C. et al., Persons Coming Under
the Juvenile Court Law.

KERN COUNTY DEPARTMENT OF
HUMAN SERVICES,

Plaintiff and Respondent,

v.

K.W.,

Defendant and Appellant.

F058887

(Super. Ct. Nos. JD115225-01, JD115226-01
& JD 115227-01)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Kern County. Robert J. Anspach,
Judge.

Marcia F. Levine, under appointment by the Court of Appeal, for Defendant and
Appellant.

Theresa A. Goldner, County Counsel, and Judith M. Denny, Deputy County
Counsel, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Cornell, J., and Poochigian, J.

K.W. (mother) appeals from orders terminating parental rights (Welf. & Inst. Code, § 366.26)¹ to her three children. Mother contends the court abused its discretion by denying her request (§ 388) to regain custody and rejecting her argument that termination would be detrimental to the children based on her relationship with them (§ 366.26, subd. (c)(1)(B)(i)). On review, we disagree and affirm.

PROCEDURAL AND FACTUAL HISTORY

In July 2007, mother lived with her long-time boyfriend, J.W., and her three children, then four-year-old C., two-year-old A., and seven-month-old K. That month, two-year-old A. sustained a fracture to her right elbow and neither mother nor J.W. had any explanation for the injury. As a result, the children were placed in protective custody and dependency proceedings were initiated.

Although mother later claimed a third party was to blame for A.'s fracture, it was determined that J.W. was responsible. J.W. was the oldest child C.'s presumed father. While J.W. believed he was also the youngest child K's father, DNA testing later revealed A. and K. shared the same father.

J.W. had a criminal history dating back to 1999 and was on parole at the time of A.'s fracture. A month later, he was incarcerated on a parole violation. He was scheduled to be released sometime in October 2007. Mother claimed that, upon J.W.'s prison release, he would not be residing with her.

It was under these circumstances that in October 2007, the Kern County Superior Court exercised its dependency jurisdiction over the children (§ 300, subd. (b)) and adjudged them juvenile dependents. The court also placed the children with mother, subject to family maintenance services, and specifically ordered her to participate in counseling for failing to protect the children. In mid-November 2007, the court removed

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

C. from J.W.'s custody with reunification services. His contact with C. was specifically restricted to twice-weekly visits that respondent Kern County Department of Human Services (department) was to supervise.

Once J.W. was released from prison, however, mother allowed him to resume living with her and the children. Both adults, nonetheless, denied living together. There was in effect at the time a restraining order protecting mother from J.W. J.W. also assaulted mother in C.'s presence. Both mother and J.W. later sought to minimize that violent incident.

Consequently, in December 2007, the department detained the children a second time. It filed a supplemental petition (§ 387) alleging the court's previous disposition of returning the children to mother's care had been ineffective in protecting the children based on the recent events.

Reunification Period

In January 2008, the court found the supplemental petition true, removed the children from parental custody, and ordered reunification services. In the meantime, mother and J.W. had married.

The court specifically ordered mother and J.W. to participate in both domestic violence and failure-to-protect counseling. J.W. also had a random drug testing requirement. In the event of a positive test, he was to participate in substance abuse counseling. The court also granted weekly, supervised visits with the children.

As of the summer of 2008, mother had participated in all aspects of the reunification plan. She completed counseling for her failure to protect the children. She also participated in domestic violence counseling and was scheduled to complete the program in the fall. She regularly visited with the children and her interaction was reportedly of good quality.

Mother, nevertheless, continued to live with J.W. For his part, J.W. also participated in services although he tested positive for drugs in July and August 2008 and was referred for drug treatment. It also appeared he was selling drugs and mother was aware of this. Notably, J.W. denied using drugs and mother essentially defended him.

A social worker informed mother that being with J.W. hurt her chances of reunifying with the children. Mother argued in response that the children loved J.W. and he loved them. She also stated she was fully aware of the department's concerns and the fact that her children needed her. Mother added, however, she was the only person who supported J.W.

At an August 2008 status review hearing, the court found mother made moderate progress and continued the children's out-of-home placement. At the hearing, mother's counsel represented to the court that J.W. would no longer be living with mother.

As of November 2008, the mother completed court-ordered services and was eligible to transition to unsupervised visits with the children. She nonetheless wanted her visits to coincide with J.W.'s visits even though he was ineligible for unsupervised visitation.

At a November 2008 status review hearing, the court authorized the department to place the children with mother upon approval of her residence. After the hearing, a social worker discussed with mother the importance of not allowing J.W. in her home when she had the children. Mother stated she understood clearly what was expected of her and that she would not jeopardize anything concerning the children. Later that day, the department placed the children with mother on an extended visit.

Soon thereafter, J.W. resumed having unauthorized contact with the children. In December 2008, the department learned from the oldest child that J.W. "sleeps on the bed with Mommy." When confronted with this, mother adamantly denied she had been allowing J.W. to stay with her and the children. She later claimed she was scared of J.W.

According to social workers, mother apparently only reported problems with J.W. when she was caught by the department.

It was further discovered that mother and J.W. were engaged in domestic violence while the children were in mother's care. In addition, J.W. had been discharged from substance abuse counseling. He stopped drug testing as well.

Consequently, the department halted the children's extended visit with mother in the latter part of December 2008 and returned them to foster care. The following day, mother called and met with J.W. purportedly about a separation. According to mother, J.W. threatened to kill her with a knife he had. This led to a parole hold and J.W.'s arrest.

Despite the fact that mother had completed her services, she had not met the objectives of those services. She allowed J.W. to have unauthorized contact with the children and continued to maintain a volatile relationship with him while caring for the children. Whatever skills she may have learned through services in which she participated, she had failed to utilize them. The department in turn recommended the court terminate all reunification services.

February 2009 Twelve Month Review and Setting Order

At a contested evidentiary hearing in February 2009, mother denied in large part the department's evidence. She claimed most of her contact with J.W. in November 2008 was over the telephone. She also testified he once broke into her apartment in the end of November and would not leave. Asked if she called the police or anyone else, she responded no.

Mother subsequently moved herself and the children to a hotel where she lived next door to her mother-in-law. A day later, J.W. started coming by and mother allowed him in. Mother admitted J.W. had been with her on at least five occasions while she had the children. She testified she allowed him to spend the night because he would try to use

physical force if she did not. She, however, did not notify the social worker. Mother also testified she was unaware there remained a restraining order in effect.

More recently, mother had filed for divorce although she had just received the papers and had not yet served J.W. Mother testified she was stronger than she had been previously and had the tools to fight back. She believed she should never choose a man over her children. She was going to participate in a self-defense class and was attending a new domestic violence class as well as classes at a local college. She added she had a family law restraining order and there was a special condition on J.W.'s parole and probation prohibiting him from contacting her.

J.W. testified he had lived with mother for most of the time that she had the children with her.

The court thereafter followed the department's recommendation and terminated reunification services, having found mother made minimal progress.

In so doing, the court expressly found the children were twice returned home and, shortly thereafter, mother proceeded to allow J.W. back into the home. In the past month, according to the court, mother developed into a sympathetic figure but prior to that she was more protective of J.W. than her own children. She was not "forthcoming" and "straight" with the department. She knowingly violated court orders. She also placed the children at risk in terms of domestic violence that had occurred between her and J.W. Further, there was drug use and even some selling by J.W. of which mother was aware when the children were with her.

The court in turn set a section 366.26 hearing to select and implement permanent plans for the children. Although the hearing was scheduled for June 2009, there were multiple continuances. The court eventually conducted a contested hearing in September 2009.

Adoption Assessment

In May 2009, a county adoption social worker completed an adoption assessment of the children. She reported the children were likely to be adopted. Because the children's adoptability is undisputed on appeal, we do not recite that evidence here.

Relevant to this appeal, the assessment summarized mother's visitation history and reported the children and mother currently had a moderate, but positive visiting relationship. However, their relationship was not significant enough that the children would suffer severe emotional trauma if rights were terminated. Mother failed to exhibit discipline and coping skills to appropriately parent the children during visits. Also, any parental bond that existed had likely diminished to some degree because the children had been cared for and nurtured by foster parents. The children had been able to attach to other parental figures in their lives.

The oldest child C. did tell the adoption social worker he would miss mother if they were no longer to have visits because he liked when she "[brought] me stuff." On the other hand, he also stated "[I] like living her[e] because I know I am safe, and [I] like to play sports and my mom and dad [the foster parents] go to my games." According to the adoption social worker, C. might have some adjustment difficulties and suffer some short term loss as a result of parental rights termination due to his age and longer relationship with mother. However, any such difficulty would be offset and outweighed by the benefits of adoption. The younger children, who could not verbalize their opinions, would not suffer according to the adoption social worker.

Section 388 Petition and Opposition

Meanwhile, mother's counsel filed a section 388 petition seeking return of custody to mother. The petition alleged mother had attended domestic violence awareness groups, completed courses at the local college, and obtained mental health services, along

with being compliant with her medication.² In addition, mother was allegedly employed, had transportation and housing, was pursuing dissolution from J.W., and had consistently visited the children. Mother saw herself as having personally transitioned and grown to understand and implement the material she previously learned in reunification. Placing the children with her would allow the children to enjoy her care and be placed together.³ The court set a hearing on the mother's petition to be held in conjunction with the section 366.26 hearing.

The department prepared a report in opposition to mother's petition. According to the department, a return to mother's care posed a substantial risk of detriment to the children. A social worker's June 2009 investigation revealed mother was living in a one-bedroom, one-bath apartment with her current boyfriend. The apartment was inappropriate due to its small size and the fact that the children could not stay in the bedroom with mother's boyfriend. Mother understood she would need a larger apartment. Mother also reported her work hours had been cut back. In addition, mother had not been taking her daily dose of Abilify, purportedly prescribed for anxiety. Over the past 30 days, mother had only taken her medicine 10 times.

Mother further claimed to the social worker that she had not seen J.W. since December 24, 2008, and did not know his whereabouts. According to mother, J.W. did try to contact her by e-mail as recently as May 2008 but she had not emailed him.

As for her current boyfriend, mother reported they had been together for four months, that her children knew her boyfriend, and they seemed to like him. The boyfriend denied any child protective services history but admitted he had been charged

² Mother was reportedly bipolar.

³ At the time, the oldest child C. was in a separate placement from his sisters. However, the children had daily interaction with one another.

with domestic violence in 2005 and subsequently completed a 52-week domestic violence program.

The social worker also spoke on separate occasions with six-year-old C. and four-year-old A. C. liked his placement, was happy there, and wanted to continue living there. He liked his visits with mother but, when asked questions about living with her, C. changed the topic and would not answer the social worker's questions. A. also liked her placement but did not answer the social worker's questions regarding visitation and mother. The child ran out of the room instead. According to A.'s caregiver, A. sometimes had tantrums before a visit and would say she wanted to stay home with the caregiver. After visits, A. had tantrums and appeared confused or even depressed.

In July 2009, a placement social worker spoke with mother who reported having a problem at work and a "stress attack." Mother did not know her job status. Further, a doctor prescribed Ativan, which made her feel "out of touch." In addition, mother still had not found another place to live. She, however, claimed she was in a "stable relationship" and was no longer with J.W. since December 2008. The record reveals J.W. was incarcerated from at least February 2009, when the court set the section 366.26 hearing, through July 2009.

Mother also completed a new failure-to-protect program and more domestic violence counseling. Mother repeatedly asked during the conversation if her boyfriend could visit the children with her. The placement social worker replied no, because he was not the parent of any of the children.

At the next scheduled visit, mother brought her boyfriend along with her. She wanted him to have the opportunity to bond with the children because she believed the children would be returned and the boyfriend would be there in the home.

The children seemed very excited to see mother who had brought food and drink snacks for them. Over the course of the visit, C. was "very hyper" and did as he wished

rather than follow mother's direction. Mother appeared to have trouble maintaining control and disciplining her children during visits. At the end of the visit, the children ran to greet their caregivers and seemed happy to see them.

Meanwhile, in the later part of July 2009, the girls were placed with their brother C. His foster parents were committed to adopting the girls as well as C.

Combined Sections 388 and 366.26 Hearing

Mother called a human services aide who supervised and documented visits between the children and mother since July 2009. According to the aide, the children seemed excited at the start of some visits and generally ran up to greet mother with a hug. Sometimes they listened to mother during visits. Sometimes they did not. Mother would use a threat of a nap as a means of disciplining the children. Overall, the aide considered the visits normal. On occasion, however, the aide did have to intervene because C. was out of control and would run away from mother. The children were generally happy when the visits were over. "[T]hey bounce on in, they bounce right back out."

C.'s caregiver testified C. did not run away from her or ignore her directions. If he did misbehave, he received a time out or had play toys or privileges taken away. The caregiver described their relationship as "a lot of fun." She and her husband loved C. and were committed to adopting him and his sisters. The caregiver had never heard any of the children cry for mother.

C. had been in the witness's care since the spring of 2008. She observed that when C. returned to her home after the failed extended visit in November and December 2008, C. seemed colder towards mother. When asked if he would like to call mother, he would say "No thanks." He did not cry or appear upset. On two occasions, he did ask to call mother. From what the caregiver observed, C.'s demeanor around his mother was as though "he [ran] the show."

A social worker testified about a recent visit she made to mother's home. Only mother was living there. There were adequate accommodations for the children. In addition, the social worker learned mother's medication had been recently changed again. It appeared she was taking the new medication on a consistent basis.

Mother told the social worker during her visit that she (mother) and her boyfriend were no longer together. In August 2009, they were going to be married. At that time, mother had expressed her intent for him to parent the children with her. However, they had since broken up. From the time the court set the section 366.26 hearing in February 2009, there had been yet another man whom mother claimed she was going to marry. She identified him as her fiancé and wanted him to parent her children as well.

At some point, mother also had J.W. come with her to visits. The social worker was aware that mother had had some contact with J.W. since he was released from custody. He had purportedly texted mother stating he knew where she lived and was upset they were separating.

Mother testified she remained married to J.W. but "the default time [was] ready to run." She then would file for a default judgment. Mother claimed she called off her latest romantic relationship so that she could focus on the children.

Regarding her medications, mother testified she was currently taking Zoloft. She had been previously taking LexiPro but she started gaining weight. A doctor suggested the Zoloft for fewer side effects. They were still trying to find the correct dose for her. However, mother claimed that so far she had "it" under control. The medication helped her both with her anxiety and her bipolar condition.

Mother claimed the last time she had unauthorized contact with J.W. was in April 2009. Asked how the court would know she was going to remain away from J.W., mother replied the children were her life and main focus. She was sorry for what had happened and just wanted a chance to be a good mom to the children.

Mother described her visits with the children in pleasant and loving terms. She did not see any reason why the children should not be with her. She loved them and would do everything she could to take care of them. Children, in mother's opinion, needed their parent in one way or another. She previously thought the children needed a two-parent household. However, she could be a good mom without somebody else in her life.

Mother denied ever hiding J.W. in late 2008 from the social worker. She continued to claim J.W. had not lived with her then. Instead, he showed up whenever he chose. She also claimed she had approval from another social worker to allow J.W. to see the children where she was living.

About her boyfriends since breaking up with J.W., she lived with one from January to early March 2009. Starting the end of March, she lived with another boyfriend. She had referred to him as a fiancé and had talked about marriage with him. She told the social worker in reference to this boyfriend that "[a]ny man who loves a woman, loves their children, too. He was willing to accept my children as his own."

Meanwhile, mother admitted she had reinitiated contact with J.W. although she claimed she later regretted it. She had sent him a message to which he replied. He also contacted her on her My Space page.

Asked why her children were originally detained in 2007, mother testified it was due to a failure to protect. However, "it never did include who." Mother claimed her daughter A.'s arm was fractured while she was at the babysitter's. On redirect, mother testified she recognized the court found J.W. caused A.'s fracture. She added, however, "something was wrong with that arm that day, too."

Mother believed she had absorbed what had been previously taught to her in various courses. She now recognized it was her duty to protect the children from credible

risks and believed J.W. posed a credible risk to the children. She believed she could protect the children.

Mother also admitted she was no longer working and had applied for unemployment benefits. She was considering applying for possible disability benefits.

The adoption social worker testified that she observed visits starting in April 2009. From what the witness had seen, mother had difficulty parenting the children. Mother would become anxious and lose control of the visits when the children had tantrums. The adoption social worker instructed the mother on redirecting the children's behavior when they acted out. The family was so chaotic at times that the visits had to be moved. Also, the adoption social worker believed mother's practice of bringing sweet snacks to visits affected the children's behavior as well. The children departed easily after visits.

At one visit in April 2009 that went "so horribly," mother could not control herself or her emotions. The adoption social worker asked mother about it. The worker was unaware of mother's mental health diagnoses. Mother revealed she was not taking her medications. On another occasion, the worker noticed when C. left a visit, he was a totally different person knowing he was leaving the visit. He seemed to be happy, more relaxed, and calm.

The department's placement social worker was the last witness to testify. She too had observed the children's temper tantrums on a half dozen occasions during visits she supervised between mother and the children.

Following closing arguments, the court denied mother's petition and terminated parental rights.

DISCUSSION

I. Section 388 Petition

Any party to a dependency proceeding may petition the court to modify or set aside a prior order on grounds of change of circumstance or new evidence. (§ 388, subd.

(a.) The party must also show the proposed change would promote the child's best interest. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*)) Whether the juvenile court should modify a previously made order rests within its discretion and its determination may not be disturbed unless there has been a clear abuse of discretion. (*Id.* at p. 318.)

The procedure under section 388 accommodates the possibility that circumstances may change so as to justify a change in a prior order. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309 (*Marilyn H.*)) As discussed above, mother sought to set aside the court's February 2009 order continuing the children's out-of-home placement when it terminated reunification services. She contends her circumstances had genuinely changed since then. She points to her participation in a domestic violence awareness group, course work at a local college, and receipt of mental health services as well as her effort to dissolve her marriage to J.W., her employment, and housing. In mother's estimation, such proof coupled with evidence of regular and affectionate visits between her and the children warranted an order returning their custody to her. Having reviewed the record as summarized above, we conclude the court properly exercised its discretion by denying mother's section 388 petition to regain custody.

No Changed Circumstances

The fact that mother was participating in a domestic violence awareness group, completing courses at a local college, and obtaining mental health services did not amount to changed circumstances. Her problem had never been an unwillingness or inability to participate in or complete services. She previously completed court-ordered services. The problem was she learned little if anything from those services, as evidenced by her willingness to allow J.W. back into her life and the lives of the children, thereby exposing them to a significant risk of harm.

Mother also points out that she filed papers to dissolve her marriage with J.W. That, however, was neither new evidence nor changed circumstances. She testified in February 2009 that she already had started dissolution proceedings. In addition, more than six months had since elapsed and mother had yet to take any further action on the case.

In any event, the evidence was conflicting as to whether mother eliminated either J.W. or the risk of domestic violence from her life. The court may have determined it was J.W.'s latest incarceration, not some effort on mother's part, that removed J.W. from her daily life. Even so, mother reinitiated contact with him although she at first claimed otherwise. Mother also still appeared to defend him when she testified about the initial cause of the children's dependency. Meanwhile, mother's romantic relationships with other men, especially one who also had a history of domestic violence, belied her repeated claims that her children came first and she had learned from her previous mistakes.

As to mother's assertion that she was employed, had housing, and was addressing mental health problems such that she was in a stable position to provide a home for the children, the evidence at trial suggested otherwise. She had lost her job. Whether she would qualify for disability benefits, assuming she applied, was unknown. Further, her doctors had yet to find an effective medication with few side effects to deal with her purported mental health problems.

Finally, mother's reliance on her testimony that she had learned from her mistakes and now could protect the children does not compel a different outcome in this case. She ignores that it is the exclusive province of the trial court to evaluate her credibility and determine what weight to afford her testimony. (*In re Laura F.* (1983) 33 Cal.3d 826, 833; *In re Amy M.* (1991) 232 Cal.App.3d 849, 859-860.) Here, the court previously found mother was neither forthcoming nor truthful. Further, at the September evidentiary

hearing, the court legitimately questioned how it could be certain mother had learned anything, when she had not done so previously.

Based on the foregoing, the trial court properly found circumstances had not changed. Thus, mother's showing did not justify a change in the court's prior order. (*Marilyn H.*, *supra*, 5 Cal.4th at p. 309.)

No Best Interest Showing

Even were we to conclude mother's circumstances had sufficiently changed, we would still uphold the trial court's denial. Mother failed to introduce any affirmative evidence that an order returning custody to her would be in the children's best interests. At best there was evidence of some pleasant visits. However, there was also conflicting evidence regarding the quality of some visits, mother's difficulty maintaining control over the children, and the tantrums the children experienced.

On appeal, mother focuses instead on factors advanced by the appellate court in *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 530-532 (*Kimberly F.*) to evaluate the children's best interests. This does not mean, however, that mother was entitled to the relief she sought.

Parent and child share a fundamental interest in reuniting up to the point at which reunification efforts cease. (*In re R.H.* (2009) 170 Cal.App.4th 678, 697.) By the point of a section 366.26 hearing to select and implement a child's permanent plan, however, the interests of the parent and the child have diverged. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 254.) Indeed, children have a fundamental independent interest in belonging to a family unit and they have compelling rights to be protected from abuse and neglect and to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child. (*Marilyn H.*, *supra*, 5 Cal.4th at p. 306.) Adoption gives a child the best chance at a full emotional commitment from a responsible caretaker. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.)

Therefore, after reunification efforts have terminated, the court's focus shifts from family reunification toward promoting the child's needs for permanency and stability. (*Marilyn H.*, *supra*, 5 Cal.4th at p. 309.) In fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. (*Id.*, at p. 302.) "A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child." (*Stephanie M.*, *supra*, 7 Cal.4th at p. 317.)

Here, mother made no attempt to rebut the presumption that continued out-of-home placement was in the best interests of the children. (*Marilyn H.*, *supra*, 5 Cal.4th at p. 302.) Neither in the juvenile court nor on appeal has mother addressed the children's needs for permanency and stability and how those interests would be advanced by returning custody of the children to her.

In *Kimberly F.*, the case on which mother now relies, the court of appeal rejected a trial court's use of a simple best interest test — of comparing the household and upbringing offered by the natural parent or parents with that of the caretakers — in analyzing a section 388 petition. (*Kimberly F.*, *supra*, 56 Cal.App.4th at pp. 526-530.) The appellate court then determined a list of factors, *not meant to be exhaustive*, that should be considered: the seriousness of the problem leading to dependency and the reason that problem was not overcome by the final review; the strength of relative bonds between the dependent children to both parent and caretakers and the length of time a child has been in the dependency system in relationship to the parental bond; and, the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been. (*Id.* at pp. 530-532.)

We agree with *Kimberly F.* to the extent it rejects a "simple best interests" analysis and references the strength and comparable length of a child's existing bonds as factors to be considered in assessing whether a return of custody or a resumption of reunification

services would be in a child's best interests. (See *Stephanie M.*, *supra*, 7 Cal.4th at p. 325.) However, *Kimberly F.* fails to take into account the state Supreme Court's analysis in *Stephanie M.* of best interests once reunification efforts have failed. Thus, we do not find *Kimberly F.* persuasive in this regard.

Given mother's failure to establish the child's interest in permanency and stability would be promoted by a return of custody, we conclude the court did not abuse its discretion by denying mother's request. (*Stephanie M.*, *supra*, 7 Cal.4th at p. 318.)

II. Parent/Child Relationship

Mother alternatively contends the court erred by rejecting her claim that the children would benefit from an on-going relationship with her such that termination would be detrimental to them (§ 366.26, subd. (c)(1)(B)(i)). We disagree.

Section 366.26, subdivision (c)(1)(B), acknowledges termination may be detrimental to a dependent child under specifically-designated and compelling circumstances. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) One of those circumstances is when a parent has maintained regular visitation and contact and the child would benefit from continuing the relationship to such a degree that the child would be greatly harmed by termination. (§ 366.26, subd. (c)(1)(B)(i); *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 [beneficial relationship exception].)

A finding that termination would not be detrimental, however, is not a prerequisite to the termination of parental rights. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1347.) The statutory presumption is that termination and permanency through adoption is in the child's best interests and therefore not detrimental. (§ 366.26, subd. (b); *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1344.) A party opposed to termination bears the burden of showing that termination would be detrimental under one of the statutory exceptions. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.)

Consequently, when a court rejects a detriment claim and terminates parental rights, the appellate issue is not whether substantial evidence exists to support the court's rejection of the detriment claim. The issue for the reviewing court is instead whether the court abused its discretion in rejecting the detriment claim. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.) For this to happen, the proof offered would have to be uncontradicted and unimpeached so that discretion could be exercised only in one way, compelling a finding in favor of the appellant as a matter of law. (*Roesch v. De Mota* (1944) 24 Cal.2d 563, 570-571; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.)

According to mother, the children's conduct during visits, the manner in which they greeted her, and the affection they displayed towards her was enough to signify a strong and positive relationship worth preserving. However, the law requires that a parent demonstrate more than pleasant visits or frequent and loving contact. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 953-954.)

In order for the beneficial relationship exception to apply, the parent/child relationship must promote the child's well-being to such a degree that it outweighs the well-being the child would gain in a permanent home with new, adoptive parents. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) A juvenile court must balance the strength and quality of the parent/child relationship in a tenuous placement against the security and the sense of belonging that a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated. (*In re Lorenzo C.*, *supra*, 54 Cal.App.4th at p. 1342; citing *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

Here, mother did not offer any evidence that any of her children had such a substantial, positive relationship with her that termination would greatly harm the child. At most, there was the adoption social worker's opinion that the oldest child might have

some adjustment difficulties and suffer some short term loss. Even so, any such difficulty would be offset and outweighed, in the adoption social worker's opinion, by the benefits of adoption.

Thus, we conclude the court did not abuse its discretion by rejecting mother's claim of a beneficial relationship with the children.

DISPOSITION

The orders terminating parental rights are affirmed.